SUPREME COURT OF THE UNITED. STATES.

October Term, 1898.

ANDERS JAKOBSEN, PETITIONER,

versus

OSCAR M. SPRINGER ET ALS., RESPONDENTS.

THE PETITION OF ANDERS JAKOBSEN, CLAIMANT OF THE NORWEGIAN STEAMSHIP ALBERT DUMOIS, PRAYING FOR THE ALLOWANCE OF A WRIT OF CERTIORARI, IN THE NATURE OF A CROSS-APPEAL, IN NO. 413, OCTOBER TERM, 1898.

To the Honorable the Judges of the Supreme Court of the United States:

Your petitioner, Anders Jakobsen, claimant of the Norwegian steamship Albert Dumois, with respect represents that a collision lately occurred in the Mississippi river between said steamship and the steam yacht Argo, and that Oscar M. Springer, on the 28th day of January, 1898, alleging himself to be the owner of said yacht, filed a libel against said steamship in the District Court of the United States for the Eastern District of Louisiana, claiming damages in the sum of $40,000, as in case of a total loss, and that said steamship was arrested under process issued in said libel; that thereupon your petitioner filed a petition in the cause claiming the benefit of the limited liability provided for in the act of Congress of March 3, 1851, and in Sec. 4263 of the U. S. Revised Statutes; that all parties in interest were brought in under

said petition, and the said steamship and her pending freight were appraised and the vessel released upon a bond duly approved and accepted by the Court; that Mrs. Marie B. Bougeois de Blesine, mother of Faurie de Blesine, a member of the crew of the Argo, who lost his life in said collision, and Mrs. Genevive Kiplinger Hester, wife of Harrison P. Hester also a member of the crew of the Argo, who lost his life in said collision, each came in and propounded claims for $10,000 damages for loss of life, and that members of the crew of the yacht Argo also came in and filed claims for loss of personal effects for a small amount.

The collision above referred to took place eighty miles below the city, between the Argo, a fast steam yacht, 101 feet long, six feet draught, and the Norwegian steamship Albert Dumois, a slow freight vessel, 210 feet long and seventeen feet draught, engaged in the fruit trade between New Orleans and Port Limon, Costa Rica.

The Argo was chartered by representatives of the daily *Picayune*, and left the city of New Orleans at 7 o'clock P. M. January 27, 1897, for a trip to the Jetties, having on board James Brown, as master; Robert S. Orkney, engineer; Isaac Broadhurst, firemen; E. C. Green, cook; Charles A. Desseamus, deck hand, and H. P. Hester and Faurie B. de Blesine, reporters for the *Picayune*, who shipped as part of the crew, the yacht being shorthanded.

The Dumois entered the river on a voyage from Port Limon, Costa Rica, to New Orleans, about 10 o'clock P. M., having on board William M. Lumbard, a licensed pilot; a master and first and second mate, engineers and a full crew.

Both vessels arrived at a point near the new canal, eighty miles below the city, about 12:30 A. M., the Argo descending near the east bank at a speed of eighteen or twenty miles an hour, and the Dumois ascending also near the east bank at a speed of nine miles an hour, and when signals were first exchanged for passing they were about half a mile apart, "head and head," the Argo, however, being a little on the starboard of the Dumois. The night was clear, but dark, and a bitter cold wind was blowing across the river from east

to west. The Tug Day Dream, with a tow of two or three luggers, at this time, was just coming in to the landing, about 200 feet below the canal on the east bank, for the purpose of lying by for the night. The Argo came down very close to the tug and luggers and saluted them with one whistle when just above them and again as she passed them. After the Argo had passed them and as soon as her lights came in view and could be distinguished, the Dumois gave two blasts of her whistle, indicating that she would starboard and pass the Argo on the right, it being impossible for her to port her helm without going into the bank, or running into the tug and luggers, just ahead, and it being unsafe to keep to her course in the face of the Argo, which was rapidly approaching, "head and heaed," without indicating her intention to change her own course. Immediatly after the Dumois changed her course so that her red port light was shut out, the Argo answered her signal with one whistle. and put her helm hard aport, still keeping her speed, Captain Brown believing, as he says, that his vessel was so fast he could safely cross ahead of the Dumois. Supposing that his first signal had not been heard, or if heard had been misunderstood, the pilot of the Dumois immediately repeated his signal, and gave the danger signal of three whistles and reversed and backed; but before her headway could be fully stopped, the Argo came in collision, striking the Dumois at right angles about ten feet aft the stem. After the vessels separated, the Argo's engines, which had stopped from the shock, were started up and the head pointed to the west bank with the intention of beaching her, but she sunk in four or five minutes, carrying down Hester and Blesine, who lost their lives, and became herself a total loss.

The pleadings filed on the part of the claimant of the Albert Dumois charge that Blesine and Hester were members of the crew of the yacht Argo at the time they were killed; and that the Argo was solely in fault for the collision. The pleadings filed in behalf of the claimant of the Argo charge that the Dumois was solely in fault; and the claims of the legal representatives of Blesine and Hester aver that the

deceased were passengers and not part of the crew of the Argo.

The District Court decreed the Dumois to be solely in fault for the collision, and awarded $11,000 damages for the loss of the Argo, $2500 to Mrs. Blesine, and $5000 to Mrs. Hester. for loss of the deceased seamen.

Oscar M. Springer and your petitioner both appealed from the decree of the District Court to the Court of Appeals, Springer claiming that his damages should be increased, and your petitioner claiming that the Argo was solely in fault for the collision, and that the Dumois should therefore be relieved of all liability. Said appeals were entitled Anders Jakobsen, claimant, vs. Oscar M. Springer *et als.*, and Oscar M. Springer vs. Anders Jakobsen *et als.*, No. 689, on docket of said Court of Appeals.

The Court of Appeals found both vessels in fault, reversed the decree of the District Court, and awarded the claimant of the Argo half damages. As to Blesine and Hester, the Court found that though they had volunteered to make up part of the crew of the Argo for the purpose of complying with the navigation laws, they were not members of the crew, and affirmed the decree in favor of their legal representatives.

Having found both vessels in fault, the Court allowed your petitioner to deduct from the damages awarded Springer one-half the damages your petitioner was condemned to pay for the loss of life.

Being dissatisfied with the decree of the Court of Appeals, the said Oscar M. Springer recently applied for and obtained from your Honors a writ of certiorari upon his complaint that the Court erred (1) in finding the Argo mutually in fault with the Dumois; (2) in allowing the above deduction; (3) in not allowing him $20,000 damages.

And your petitioner shows that the record of said cause has been sent up to this Court in obedience to said writ and filed under the title of Oscar M. Springer, Petitioner, vs. Anders Jakobsen, Claimant, *et als.*, No. 413 of the present October term 1898, to which petitioner begs leave to refer as part of this petition.

Now your petitioner also complains of said decree and shows that the Court of Appeals erred, as follows:

1. In not finding that said collision was caused solely by the fault of the yacht Argo, as established by the evidence; and in not discharging the steamship Albert Dumois from all liability for such collision.

2. In not holding that Blesine and Hester under the uncontradicted evidence were members of the crew of the yacht Argo at the time they were killed, and as such partook of the fault of their vessel.

3. In fixing the value of the yacht Argo at $15,000 when in fact she was not worth more than $9000 at the time of the loss.

Your petitioner desires to have the benefit of these assignments of error, if possible, without the issuance of an additional writ of *certiorari* to bring up the record, which has already been sent up and filed in this Honorable Court, under the writ issued on the petition of the said Oscar M. Springer. But if this can not be done, your petitioner prays that your Honors may be pleased to grant a writ of *certiorari*, directing the Circuit Court of Appeals for the Fifth Judicial Circuit to certify the record to this Court for review as to said errors complained of, to the end that the same may be corrected.

And your petitioner further prays for all such other and further redress and relief as justice may require.

Respectfully submitted,

J. D. ROUSE,
WM. GRANT,
Proctors.

ANDERS JAKOBSEN,
By Wm. Grant, his Proctor.

William Grant being duly sworn says that he is one of the proctors for Anders Jakobsen, the petitioner above named, who is absent from the United States, and that the facts stated in the foregoing petition are true to the best of his knowledge and belief.

WM. GRANT.

Sworn to before me this 6th day of April, 1899.

H. G. DUPRE, *Notary Public.*

BRIEF IN SUPPORT OF THE FOREGOING PETITION.

As the record in this case has already been sent up to this court, under the writ of certiorari granted on the petition of Oscar M. Springer, and has been printed, and is on file under the No. 413 of the present term, we do not consider it necessary to file additional copies with this petition.

We do not propose to discuss the assignment of errors contained in the petition, at length. It is sufficient to say that the material question, as to the fault of the colliding vessels, has been opened by the complaint of Springer, and must be decided by the court; and that it is only fair that petitioner should have the benefit of your Honors' finding on that issue, as well as on the others in the case. And we take it for granted that your Honors will make such order as may be requisite to entitle petitioner to be heard on his complaint, and to enable the court to do full justice between the parties.

As your Honors have already decided in Panama R. R. Co. vs. Napier Shipping Co., 166 U. S. 260, that the writ of *certiorari* brings up the whole record, and that the entire case is before the court for review upon such writ, it would seem to be unnecessary to require petitioner to bring the record up a second time. The court having acquired jurisdiction to hear the whole case under the first writ, we see no good reason why the petitioner may not be heard on his assignment of errors, in the original cause. It is simply a question of practice which this court has plenary power to regulate as it sees fit; and we submit that it is competent for the court to order this petition filed in the original cause, No. 413, and that petitioner may there have the benefit of his assignment of errors.

But if this can not be done, we ask that the usual order may be granted for a writ of *certiorari*.

Respectfully submitted,

J. D. ROUSE,
WM. GRANT,
Proctors.